IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Lalu Ram Versus Ramuram and Ors.

S.B.CRIMINAL MISC. PETITION NO. 80/2003
against the judgment dated 9.12.02
passed by Additional Sessions Judge,
Parbatsar in Cr. Revision No.8/2000.

Date of Order : 16.2.2005

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. G.R.Punia, for the petitioner.
Mr. A.K.Acharya, for the respondents.

BY THE COURT:-

By this Criminal Misc. Petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 9.12.2002 passed by Additional Sessions Judge, Parbatsar (for short 'the Revisional Court') in Criminal Revision No. 8/2000 whereby the Revisional Court dismissed the revision petition filed by the petitioner against the order dated 11.5.2000 passed by Sub Divisional Magistrate, Parbatsar (for short 'the Executive Magistrate') on an application filed by respondent Ramuram under Sections 133 and 142 Cr.P.C. Aggrieved by the orders of the courts below, the petitioner has filed the instant criminal misc. Petition.

The facts and circumstances giving rise to the instant petition are that the respondents No. 1 to 3 filed an application before the Executive Magistrate under Sections 133 and 142 Cr.P.C., inter alia alleging therein that the way which is being used by the petitioner through Govt. land has been blocked by erecting fancing-wall. On notice being served on the petitioner and others, a reply to the application was filed denying the respondents' to way. It was also stated that the alleged way which is being claimed by the respondents No.1 to 3 is a private way and the provisions of Sections 133 and 142 Cr.P.C. relate to the removal of public nuisance. Without considering this aspect of the matter, the Executive Magistrate vide order dated 11.5.2000, directed to remove the obstruction with the help of police. This order came to be challenged by the petitioner before the Revisional Court. The Revisional Court refused to interfere with the order passed by the Executive Magistrate.

I have heard learned counsel for the parties. I have carefully perused the application filed by the respondents under Sections 133, 142 Cr.P.C.

Section 133 Cr.P.C. provides that “whenever a District Magistrate or a Sub Divisional Magistrate or

any other Executive Magistrate specially empowered in this behalf by the State Govt., on receiving the report of a police officer or other information and on taking such evidence (if any), as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or....."

Thus, by this provision, a procedure has been provided to remove the nuisance. The very essential requirement for application of provision of Section 133 is that there must be evidence showing that any unlawful obstruction or nuisance has been created in a public place, way, River or Channel which may be lawfully used by the public. The user by public is a condition precedent for initiating the proceeding u/s 133 Cr.P.C. In the instant case, there is no such allegation that the petitioner obstructed any public way or the way which is lawfully used by the public.

Learned counsel for the parties submit that a civil suit has been filed by the respondents No. 1 to 3 before the Civil Judge (Senior Division), Makrana seeking declaration of way with respect to the land in question which is yet pending. Since the lis is pending before the Civil Court and ultimately the rights of the parties are to be determined by the

Civil Court and the fact that there being no allegation of obstructing public way or the way which may be lawfully used by public, the proceedings u/s 133 Cr.P.C. as also under Section 142 Cr.P.C. are not maintainable for a private dispute.

Consequently, the criminal misc. petition is allowed. The order passed by the Revisional Court as well as the Executive Magistrate dated 9.12.02 and 11.5.2000 respectively, are set aside. The proceeding pending before the Executive Magistrate is quashed.

(H.R.PANWAR),J.

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